

## **CHAPTER 12. INTERDISTRICT PUBLIC SCHOOL CHOICE**

### **SUBCHAPTER 1. GENERAL PROVISIONS**

#### **6A:12-1.1 Purpose**

The purpose of this chapter is to establish the rules for the interdistrict public school choice program (choice program) in the Department of Education (Department) as provided for in N.J.S.A. 18A:36B-1 et seq. The choice program is necessary to increase options and flexibility for parents and students in selecting a school which best meets the needs of each student, thereby improving educational opportunities for New Jersey citizens. The choice program has increased the degree to which the education system is responsive to parents and students. It has also effected systemic improvements such as enhancing academic achievement and improving efficiency through a voluntary redistribution of students from overcrowded to under-enrolled school districts. Ultimately, the choice program can improve the quality of public school education in New Jersey by creating a healthy competition among school districts.

#### **6A:12-1.2 Scope**

(a) Any school district in the State established pursuant to Chapter 8 or Chapter 13 of Title 18A of the New Jersey Statutes will be eligible to apply to become a choice district. A choice district may accept non-resident students into an educational program in the choice district at the expense of the State. However, there shall be in operation no more than 21 choice districts Statewide and no more than one per county.

(b) District boards of education may choose to apply to participate in the choice program as choice districts by receiving choice students pursuant to this chapter.

(c) District boards of education may not maintain at the same time both a tuition program pursuant to N.J.S.A. 18A:38-3 and a choice program.

(d) District boards of education currently in a sending/receiving relationship are eligible to participate in the choice program unless otherwise legally prohibited.

#### **6A:12-1.3 Definitions**

The following words and terms, as used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise.

"Annual maximum statutorily established amount" means the amount established for transportation of nonpublic school students in accordance with N.J.S.A. 18A:39-1a.

"Choice district" means a public school district established pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey Statutes that chooses to participate in the choice program by

receiving choice students and that applies for and receives Commissioner approval of its choice program application.

"Choice program" means the Interdistrict Public School Choice Program authorized in N.J.S.A. 18A:36B-1 et seq.

"Choice student" means an out-of-district student who is accepted into a choice district.

"Sending district" means the choice student's district of residence.

## **SUBCHAPTER 2. CHOICE PROGRAM ELIGIBILITY CRITERIA**

### **6A:12-2.1 Eligibility criteria for district boards of education**

A district board of education of a school district established pursuant to Chapter 8 or Chapter 13 of Title 18A of the New Jersey Statutes is eligible to participate in the choice program if it has classroom space available, completes an application form provided by the Department pursuant to this chapter, and receives approval from the Commissioner to participate.

### **6A:12-2.2 Eligibility criteria for students**

(a) To be eligible to participate in the program, a student shall be enrolled at the time of application in grades K through nine in a public school of the sending district and have attended school in the sending district for at least one full year immediately preceding enrollment in a choice district.

1. If a student attends public school in his or her district of residence and is counted in that district's October Application for State School Aid and the student's family moves during the school year and the student attends public school in his or her new district of residence for the remainder of the school year, the student shall have satisfied the eligibility requirement for application to the school choice program.

(b) Students residing out of State may not participate in the choice program.

## **SUBCHAPTER 3. CHOICE DISTRICT APPLICATION PROCEDURES**

### **6A:12-3.1 Choice program application procedures for a district board of education**

(a) An eligible district board of education which chooses to participate in the choice program shall submit a completed application on a form provided by the Department no later than April 30 in the year prior to the school year in which the choice program will be implemented in the school district. The application shall include, but not be limited to, the following information:

1. The number of available openings for choice students by program, grade level and school building;

2. A list of the districts likely to participate in the choice program as sending districts;
  3. A description of the student selection process and any criteria required for admission which includes at least the following information:
    - i. A mechanism for screening out choice student applicants during the application process who wish to attend for extracurricular, athletic or social reasons;
    - ii. A mechanism to ensure that no choice student's learning ability is inhibited due to an excessive amount of time in transit; and
    - iii. A mechanism to ensure that choice students who are accepted are selected through a random unbiased process;
  4. Establishment of a regionwide public information program and a parent information center as set forth in N.J.A.C. 6A:12-7.1(b) and (d);
  5. A description of the choice district, its schools, its programs, its policies and procedures; and
  6. An analysis of the potential impact of the program on student population diversity in the likely participating districts and a plan for maintaining diversity in the likely participating districts, which plan shall not be used to supersede a court-ordered or administrative court-ordered desegregation plan.
- (b) The Commissioner shall notify applicants regarding approval or denial of program participation no later than July 30. The notification to applicants who are not approved shall include reasons for the denial.
- (c) The Commissioner shall annually prepare a list of approved choice districts and make the list available to the public.
- (d) The Commissioner may take appropriate action, consistent with State and Federal law, to provide that student population diversity in all districts participating in a choice district program is maintained. Student population diversity shall include, but not be limited to, the ethnic, racial, economic, and geographic diversity of a district's student population. The action may include, but need not be limited to:
1. Directing a choice district to take appropriate steps to successfully implement the district's plan for maintaining student population diversity;
  2. Restricting the number of choice students from a sending district or the authority of a choice district to accept choice students in the future; and/or
  3. Revoking the approval of the choice district. Any choice student who is attending a designated school in a choice district at the time of the Commissioner's revocation of approval shall be entitled to continue to be enrolled in that school until graduation.

### **6A:12-3.2 Criteria to guide the Commissioner's approval of choice program applications**

(a) The Commissioner shall take into account the following in evaluating applications and selecting approved choice districts:

1. The quality and variety of programs offered for choice student(s) participation;
2. The potential effectiveness of the student selection mechanisms and of the admissions criteria established in the application;
3. The status of the applicant district(s) in Statewide monitoring and assessment;
4. The applicant's previous experience with choice programs;
5. The budgetary ramifications for the applicant district(s);
6. The fiscal ramifications of approval on any district(s) currently in a sending/receiving relationship;
7. The impact on student population diversity in the district; and
8. The degree to which the program will promote or reduce educational quality in the choice district and the sending districts.

## **SUBCHAPTER 4. CHOICE STUDENT ADMISSIONS**

### **6A:12-4.1 Sending district procedures**

(a) A district board of education shall not prevent or discourage students from participating in the school choice program. However, upon adoption of a resolution, the district board of education of a sending district may limit the number of its students participating in the choice program.

1. The district board of education of a sending district may limit the total number of its students participating in the choice program to:
  - i. Two percent of the number of students per grade per year in the sending district limited by any resolution adopted pursuant to (a)1ii below; and/or
  - ii. Seven percent of the total number of students enrolled in the sending district.
2. The school board of a sending district may adopt a resolution to exceed the enrollment restriction percentages of (a)1i and ii above to:

i. A maximum of 10 percent of the number of students per grade per year, limited by any resolution adopted pursuant to (a)2ii below; and/or

ii. A maximum of 15 percent of the total number of students enrolled in the sending district, provided that the Commissioner determines that the resolution:

(1) Is in the best interest of the district's students;

(2) Will not adversely affect the district's programs, services, operations, or fiscal conditions; and

(3) Will not adversely affect or limit the diversity of the remainder of the student population in the district that do not participate in the choice program.

3. A sending district may not restrict the participation of its students in the choice program where the district's students provide written notice of intent to apply to a specialized educational program that is offered by the choice district and not offered in the sending district.

4. The calculation of the enrollment restriction percentage shall be conducted at the beginning of each school year and shall be based on the enrollment count as reported on the Application for State School Aid in the October preceding the school year during which the restriction on enrollment shall be applicable.

i. Students from the sending district who are already enrolled in and attending a school choice program shall not be included in the newly calculated number of students eligible to attend a school choice district.

ii. When the multiplication of the grade level enrollment by the percentage established in the sending district's resolution adopted pursuant to (a) above results in a number with a decimal, the number will be rounded to the next whole number.

iii. The sending district's resolution restricting its students' participation may not be applied to the final grade level available in the sending district.

5. Where a district board of education of a sending district has adopted a resolution to impose a limit on the number of its students participating in the choice program pursuant to this subsection, and when the student notices of intention to participate in the choice program exceed that limit, the sending district shall:

i. Hold a public lottery to determine the selection of students for participation in the choice program;

ii. Notify the parent or guardian of every student who has submitted notice of intent to participate in the choice program of the date and time of the lottery;

iii. Assign a number to each student participating in the lottery and notify the parent or guardian of the number assigned to their child(ren); and

iv. Develop a waiting list based on the lottery to be used in accordance with N.J.A.C. 6A:12-4.3(c)4.

6. Where a district board of education of a sending district has adopted a resolution to impose a limit on the number of its students participating in the choice program pursuant to this subsection, and when the student notices of intention to participate in the choice program exceed that limit, before conducting the lottery, the sending district may give preference to siblings of its resident students already enrolled in and attending the choice district.

i. In the event that the sending district elects to give preference to siblings of its resident students already enrolled in and attending the choice district and there are no spaces available after granting permission to participate in the choice program to siblings of residence students already enrolled in and attending the choice district, then the sending district shall conduct a lottery for the remaining applicants in order to assign them a place on the waiting list.

ii. In the event that the sending district elects to give preference to siblings of its resident students already enrolled in and attending the choice district and there are more sibling applicants than there are available spaces, then the sending district shall conduct a lottery first for the siblings only, in order to determine the selection of students for participation and for placement on the waiting list; and then conduct a lottery for any remaining students to determine their placement on the waiting list behind the siblings on the waiting list.

(b) The sending district's board of education may restrict enrollment of a student on the basis of an exceptional circumstance that would affect the sending district's instructional program upon the adoption of a resolution detailing the reason for the restriction. The restriction shall be subject to the approval of the Commissioner.

#### **6A:12-4.2 Choice district procedures**

(a) Choice districts shall admit choice students on a space available basis.

1. A choice district may limit admissions to a particular grade level or to areas of concentration in the schools of the choice district, such as mathematics, science, or the arts.

2. A district board of education shall not prevent or discourage students from participating in the school choice program. However, a choice district may establish reasonable criteria to evaluate prospective choice students, including the student's interest in the program offered by the choice district. These criteria shall be outlined in the district board of education's application for choice program participation.

3. A choice district may not impose admission criteria upon prospective choice program students other than those used by the choice district to determine admission of its resident students to the program for which the prospective choice students are applying.

4. A choice district may give preference for enrollment to siblings of enrolled students.

5. Any student enrolled on a tuition basis in a district at the time of approval by the Commissioner of the district as a choice district shall be entitled to remain enrolled in the choice district as a choice program student. Once the district is approved by the Commissioner as a choice district, no additional students may be admitted on a parent-paid tuition basis.

6. When a choice district receives more applications than there are spaces available, the choice district shall hold a public lottery to determine the selection of students for participation in the choice program.

i. The choice district shall develop a waiting list based on the lottery to be used in accordance with N.J.A.C. 6A:12-4.3(g).

ii. The choice district shall give preference for enrollment in both application cycles to those students on the waiting list in accordance with N.J.A.C. 6A:12-4.3(e)1 and (g).

iii. The choice district shall notify the parent or guardian of every student who has submitted an application to participate in the choice program of the date and time of the lottery.

iv. The choice district shall assign a number to each student participating in the lottery and shall notify the parent or guardian of the number assigned to their child(ren).

v. Before conducting the lottery, the choice district may give preference to siblings of students already enrolled in and attending the choice district.

(1) In the event that the choice district elects to give preference to siblings of students already enrolled in and attending the choice district and there are no spaces available after granting permission to participate in the choice program to siblings of students already enrolled in and attending the choice district, then the choice district shall conduct a lottery for the remaining applicants in order to assign them a place on the waiting list.

(2) In the event that the choice district elects to give preference to siblings of students already enrolled in and attending the choice district and there are more sibling applicants than there are available spaces, then the choice district shall conduct a lottery first for the siblings only, in order to determine the selection of students for participation and for placement on the waiting list; and then conduct a lottery for any remaining students to determine their placement on the waiting list behind the siblings on the waiting list.

(b) No applicant to become a choice student shall be discriminated against on the basis of intellectual or athletic ability, measures of achievement or aptitude, status as a student with disabilities, proficiency in the English language, or any other basis prohibited by State or Federal law.

(c) A choice district shall not prohibit the enrollment of a student based upon a determination that the additional cost of educating the student would exceed the amount of additional State aid received as a result of the student's enrollment. A choice district may reject the application for enrollment of a student who has been classified as eligible for special education services pursuant to chapter 46 of Title 18A of the New Jersey Statutes if that student's individualized education program could not be implemented in the district, or if the enrollment of that student would require the district to fundamentally alter the nature of its educational program, or would create an undue financial or administrative burden on the district.

#### **6A:12-4.3 Choice student application procedures**

(a) The Commissioner shall establish two student application cycles to ensure that parents have adequate opportunities to participate in the choice program. The first cycle shall be held in the fall. The second cycle shall be held in the spring when there are open seats in the choice district not filled during the first cycle.

(b) In the first application cycle, the student's parent or legal guardian shall provide to the sending district a written notice of the student's intention to participate in the choice program no later than November 1 or, if November 1 falls on a weekend or holiday, no later than the first business day following November 1, for initial enrollment in a choice district beginning the following school year. In the second application cycle, the written notice shall be provided no later than March 1 or, if March 1 falls on a weekend or holiday, no later than the first business day following March 1.

(c) In the first application cycle, the sending district board of education shall provide written notification to the student's parent or legal guardian no later than November 27 or, if November 27 falls on a weekend or holiday, no later than the first business day following November 27, that the student may participate in the choice program or that the student may not participate in the choice program. In the second application cycle, the written notice shall be provided no later than March 25 or, if March 25 falls on a weekend or holiday, no later than the first business day following March 25.

1. Prior to any lottery that may be held according to N.J.A.C. 6A:12- 4.1(a)5, and prior to the provision of any notice required under (c) above, the sending district shall verify that the student is enrolled in the sending district and was reported on the Application for State School Aid in October of the current school year.

2. The notice shall state the reason that the student may not participate in the choice program, if any, and shall, where appropriate, provide information regarding the waiting list established pursuant to N.J.A.C. 6A:12-4.1(a) 5.

i. Except as provided in N.J.A.C. 6A:12-4.1(b), a student determined to meet the eligibility requirements set forth in N.J.A.C. 6A:12-2.2(a) may be denied permission to participate in the program only because he or she did not win the lottery conducted by the sending district.



3. When the district board of education of a sending district adopts a resolution to impose a limit on the number of its students participating in the choice program, the sending district shall determine, in the second application cycle, when the limit has been reached based on the notices of intent to enroll that it receives from a choice district pursuant to (h) below.

4. In the event that the district board of education of a sending district holds a lottery as required in N.J.A.C. 6A:12-4.1(a)5, the notice for a second application cycle required in (c) above shall be provided to the parent or legal guardian of the next student(s) on the waiting list developed pursuant to N.J.A.C. 6A:12-4.1(a)5.

5. In the event that a sending district fails to provide timely notification in compliance with (c) above, the student's parent or legal guardian may submit an application to the choice district notwithstanding the requirement in (d)2 below.

(d) In the first application cycle, the student's parent or legal guardian must submit an application to the choice district no later than December 5 or, if December 5 falls on a weekend or a holiday, no later than the first business day following December 5, for initial enrollment beginning the following school year. In the second application cycle, the application shall be submitted no later than April 5 or, if April 5 falls on a weekend or holiday, no later than the first business day following April 5.

1. The parent or legal guardian shall identify the student, the student's district of residence, the grade level and school the student is currently attending in the district of residence, and the program, grade level and school building of the choice district for which the student is applying.

2. The student's parent or legal guardian must also submit with the application the written notification from the sending district that the student may participate in the choice program pursuant to (c) above, except in the event that a sending district fails to provide timely notification as provided for in (c)5 above.

(e) In the first application cycle, the choice district shall notify the parent or legal guardian in writing no later than January 5 or, if January 5 falls on a weekend or a holiday, no later than the first business day following January 5, whether the application has been accepted or rejected. In the second application cycle, the written notice shall be provided no later than May 5 or, if May 5 falls on a weekend or a holiday, no later than the first business day following May 5.

1. If an application is rejected, the choice district shall state the reason for rejection in the notification and shall provide information regarding the waiting list required pursuant to N.J.A.C. 6A:12-4.2(a)6.

2. In the event that the district board of education of a choice district holds a lottery as required in N.J.A.C. 6A:12-4.2(a)6, the notice for the second application cycle required in (e) above shall be provided first the parent or legal guardian of the next student(s) on the waiting list developed pursuant to N.J.A.C. 6A:12-4.2(a)6.

(f) In the first application cycle, the parent or legal guardian shall provide written notification to the choice district no later than January 15 or, if January 15 falls on a weekend or holiday, no later than the first business day following January 15, whether the choice student intends to enroll in the choice district. In the second application cycle, the written notice of intent to enroll shall be provided no later than May 15 or, if May 15 falls on a weekend or holiday, no later than the first business day following May 15.

1. Signing and submission of the notice of intent to enroll in the choice district obligates the choice student to attend the choice district during the following school year, unless the sending district and the choice district agree in writing to allow the choice student to transfer back to the sending district.

2. The notice of intent to enroll is not binding if the choice student's parents or legal guardians change residence to another district.

(g) During the first application cycle, in the event that a choice district does not receive enough notices of intent to enroll to fill all available spaces, the choice district shall provide a written notice, no later than January 25 or, if January 25 falls on a weekend or a holiday, no later than the first business day following January 25, to the parent or legal guardian of the next student(s) on the waiting list established pursuant to N.J.A.C. 6A:12- 4.2(a)6 that the student(s) is accepted. In the second application cycle, the notice shall be provided no later than May 25 or, if May 25 falls on a weekend or a holiday, no later than the first business day following May 25.

1. In the first application cycle, the parent or legal guardian shall provide written notification to the choice district no later than February 4 or, if February 4 falls on a weekend or a holiday, no later than the first business day following February 4, whether the choice student intends to enroll in the choice district. In the second application cycle, the written notice of intent to enroll shall be provided no later than June 4 or, if June 4 falls on a weekend or a holiday, no later than the first business day following June 4.

(h) The choice district shall provide written notification of receipt of each notice of intent to enroll to each sending district's board of education within 10 days of the due date for receipt of such notice of intent to enroll from a choice student resident in that sending district.

## **SUBCHAPTER 5. CHOICE STUDENT POST ENROLLMENT POLICIES**

### **6A:12-5.1 Choice student enrollment**

(a) Once enrolled in a choice district, the choice student may remain enrolled and is not required to submit annual or periodic applications.

(b) Upon acceptance of a choice student, the choice district is obligated to retain the choice student until graduation or until the choice student voluntarily withdraws, except as limited by N.J.A.C. 6A:12-4.3(f)1 and 2.

(c) In the event of termination of the choice program in that district or Statewide, any student enrolled in that choice district shall be entitled to remain enrolled in that district until graduation.

#### **6A:12-5.2 Choice student transfer**

(a) A choice student may transfer back to the sending district except as limited by N.J.A.C. 6A:12-4.3(f)1.

(b) A choice student may apply to attend a different choice district by following the choice student application procedures set forth in N.J.A.C. 6A:12-4.3.

### **SUBCHAPTER 6. APPEALS**

#### **6A:12-6.1 Appeals from Commissioner determinations**

(a) An appeal of any determination by the Commissioner not to grant an application for participation in the choice program may be filed by an eligible choice district applicant with the State Board of Education according to N.J.A.C. 6A:4.

#### **6A:12-6.2 Appeals from denial of enrollment**

An appeal of any denial of an eligible choice student applicant for enrollment in a choice district may be filed by the parent or legal guardian with the Commissioner in accordance with N.J.A.C. 6:24.

### **SUBCHAPTER 7. ADMINISTRATIVE RESPONSIBILITIES OF CHOICE DISTRICTS**

#### **6A:12-7.1 General provisions**

(a) Choice districts shall accept all credits toward graduation that were awarded by another district board of education for each choice student it accepts.

1. Choice districts shall award a diploma to a choice student participating in the program if that student meets its graduation requirements and the requirements of the State of New Jersey.

(b) Each choice district is required to establish a regionwide public information program to provide information to the public about the interdistrict public school choice program in general and the choice program offered by the district in particular. The public information program must be targeted to all communities from which the choice district can anticipate attracting students. Choice districts may not utilize the public information program to target a specific community or communities. The regionwide public information program must include the following:

1. Notification that the district is a choice district;
2. A description of the choice program offered by that district;

3. Information regarding student application procedures;
4. Information regarding the district, its schools, its programs, its policies and procedures; and
5. Any other information a choice district deems appropriate.

(c) A choice district shall establish and maintain a parent information center.

1. The center shall assist parents and legal guardians in submitting applications for enrollment of students in an appropriate program and school.

2. All materials available through the regionwide public information program established pursuant to (b) above shall be made available to parents and legal guardians at the parent information center.

(d) A choice district shall file reports with the Department at the end of each application cycle. A choice district's reports shall include demographic and student participation information, fiscal and programmatic information, and updates on the number of available openings.

## **SUBCHAPTER 8. TRANSPORTATION**

### **6A:12-8.1 Student transportation**

Each choice district shall have the responsibility for the transportation of enrolled choice students who are eligible for transportation services both to and from the choice school in which that student is accepted. Each choice district shall provide transportation or aid in lieu of transportation in accordance with N.J.S.A. 18A:36A-13 and N.J.A.C. 6A:27-4.

## **SUBCHAPTER 9. FUNDING**

### **6A:12-9.1 General provisions**

(a) Choice students participating in this program shall qualify for State aid pursuant to N.J.S.A. 18A:36B-1 et seq.

(b) The sending district shall maintain fiscal responsibility for any choice student enrolled in or determined to require a private day or residential school.

## **SUBCHAPTER 10. CHOICE PROGRAM REPORTS**

### **6A:12-10.1 Annual report**

The Commissioner shall annually report to the State Board of Education and the Legislature on the effectiveness of the choice program.